

**Testimony of Terry Huval
Director, Lafayette Utilities System
Lafayette, Louisiana
Before the
Surface Transportation and Merchant Marine Subcommittee
of the
Senate Commerce, Science and Transportation Committee**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity and the invitation to appear before you today to discuss captive rail shipper concerns.

My name is Terry Huval and I am the Director of the Lafayette Utilities System in Lafayette, Louisiana. I am appearing today on behalf of Lafayette Utilities System and both the American Public Power Association (APPA) and Consumers United for Rail Equity (C.U.R.E.), of which we are members. In addition, Mr. Chairman, I am pleased to offer for the hearing record statements on the captive shipper issue from other utilities that provide power to Louisiana consumers: AEP Southwestern Electric Power Company, Inc., Entergy Services, Inc., and the Louisiana Energy and Power Authority (LEPA).

In order to make the best use of our time, I have divided my statement into four sections: (1.) a brief introduction about the Lafayette Utilities System; (2.) a discussion about the coal-fired Rodemacher Power Station from which LUS receives much of its electrical generation; (3.) a synopsis of our rail captivity problems; and (4.) a summary of what we are asking Congress to do to help us.

1. Introduction

First, a few statements about Lafayette Utilities System, or LUS. LUS was established in 1896 and provides electric, water, and wastewater services to the citizens of Lafayette, Louisiana. Today we provide electricity to households and businesses in a community of over 110,000 people. As a customer-owned and operated utility, subject to the jurisdiction of our City Council and, ultimately, the people, we establish our rates, control our standards of service and, of course, retain all of the proceeds of our sales to provide substantial financial support to the remainder of our local government functions. LUS is committed to providing electricity to our customers at the lowest possible cost and the highest reliability of service.

2. Our Coal-Fired Generating Facilities

The LUS system generates approximately 588.5 Megawatts of electricity, 327 Megawatts through three gas fired units and 261.5 Megawatts through its 50 percent ownership share of the coal-fired Rodemacher Power Station Unit No. 2 located in Boyce, Louisiana.

Rodemacher Unit No. 2 is a 523 Megawatt unit that also provides 104.5 Megawatts of power to the Louisiana Energy and Power Authority ("LEPA"). LEPA is a joint action agency that collectively represents 18 Louisiana municipalities that also own and operate their own electric distribution systems. The third co-owner of the remainder of the plant's capacity is responsible for plant operations and for obtaining coal transportation.

The Rodemacher co-owners collectively purchase coal from mines in the Wyoming Powder River Basin. The only practical way to transport this coal from

Wyoming to Rodemacher (a distance of over 1500 miles) is by rail. To facilitate our rail deliveries, the Rodemacher co-owners have obtained, at their own expense, four trainsets of coal cars (over 500 cars).

3. Our Rail Captivity Problem

Now, Mr. Chairman, let me share with you our experience in a non-competitive rail situation.

A.) LUS is a Bottleneck Captive Shipper

I have appended a schematic to my testimony to help illustrate our situation. Two different railroad companies serve our Powder River Basin mine origin. Thus, we enjoy a choice of railroads at our coal origin. Alternative rail providers can transport our Powder River Basin coal deliveries to Alexandria, a distance of approximately 1506 miles. (The Official Railroad Station List shows railroad interchange traffic between our existing rail provider and an alternative rail provider in Alexandria, Shreveport, and other points in Louisiana. Alexandria is the nearest listed interchange point to Rodemacher). So, as you can see, there are competitive options for rail transportation for the entire length of the movement to Alexandria.

Beyond that point, our current rail provider owns the only rail line between Alexandria and Rodemacher -- a distance of approximately 19 miles. As a consequence, the Rodemacher owners are "captive" to our current provider since it is the only rail carrier serving this plant. Under current law, the current rail provider's control of the last 19 miles allows it to push its pricing monopoly all the way back to the Powder River Basin -- turning a 19 mile monopoly into a 1500+ mile monopoly. Left to its own devices, our

current rail provider will simply quote rates only from the Powder River Basin-to-Rodemacher. It has no incentive to join in any other co-operative bids with alternative rail carriers that would provide LUS the benefits of competition. Naturally, the current rail provider has no interest in competing against itself and will keep the Powder River Basin-to-Rodemacher business to itself. Thus, the Rodemacher owners face a transportation monopoly from its existing rail provider.

B. Our Customers Are Paying Higher Electricity Rates Because of our Railroad Captivity

Due to this monopoly, LUS pays substantially higher coal transportation prices than other western coal transportation customers that enjoy effective origin-to-destination rail competition. In common with most rail contracts, the Rodemacher co-owner's current transportation contract with its rail carrier precludes us from disclosing our actual transportation prices, or getting into the details concerning our freight rate levels. However, publicly available information suggests our current transportation prices are at least 50% higher, on a mileage adjusted basis, than rates where there is rail-to-rail competition for long-haul western coal train deliveries.

For the Rodemacher owners, and their customers, this lack of competition translates into millions of dollars per year in "captivity payments" – the difference between what we pay our existing rail carrier compared to what we would pay if we enjoyed railroad competition. Specifically, for the case of Lafayette, Louisiana, the annual cost of these captivity payments is about \$5 to \$6 million. These higher payments are included in LUS' customers monthly electric bills and cause higher utility bills both for individuals and for the businesses in Lafayette. Please note in this regard, that the cost of coal

transportation is one of the single largest cost items included in our electric generation costs.

C. Our Limited Options

What can we do to obtain transportation competition? Our options under current law are limited.

- Bottleneck Relief. One option would be to ask the alternative rail providers to contract with us for a competitive market price for service between the Powder River Basin and Alexandria. Under the Surface Transportation Board's 1996 "Bottleneck Decision," if LUS were to secure such a contract, our existing provider would be required to provide us with a reasonable price to transport this alternatively transported coal traffic the 19 miles from Alexandria to Rodemacher.

However, our experience has shown that getting a bid from a competitive provider under such a scenario does not occur. As we understand it, the large western rail carriers generally refuse to provide such bids. Their collective concern appears to us to be if Carrier A "poaches" Carrier B's captive customers by providing such contracts, Carrier B will then retaliate by "poaching" Carrier A's captive shippers. So unless either the Surface Transportation Board changes its interpretation of the law, or Congress changes the law to require railroads to quote "bottleneck rates," this option simply is not available.

- Build-Out Relief. A second option is to look at rail construction. Several utilities in the west and south have broken their captivity to a single rail-delivery carrier by constructing new access lines to obtain service from a second rail carrier. With second carrier access, these shippers usually report that they can obtain origin-to-destination competitive rail service and competitive rail prices.

In general, these "build-outs" are usually quite expensive, when they can be

accomplished at all, and they result in the unnecessary duplication of existing rail facilities. I have been told that in most instances, there are no significant operating, or other, problems that would preclude a second carrier from using the incumbent carrier's existing rail line to serve a captive utility plant. However, the law generally does not require monopoly destination rail carriers to allow competitive carriers to use their track – even for short distances like the 19 mile line owned by our existing carrier which would be needed by an alternative carrier to serve the Rodemacher plant.

In the past, LUS and its Rodemacher co-owners have explored constructing facilities that would allow direct alternative rail providers access to Rodemacher. In our case, any such access would most likely entail construction of a rail bridge or conveyor system across the Red River and Interstate 49. It seems absurd that current federal transportation policy is such that small municipal entities like LUS must even study such projects when other alternatives make much more sense, for example, requiring our existing carrier to transport our coal from Alexandria to Rodemacher at a fair price. With such a legal requirement, there would be no need for us to consider construction of costly, duplicative second carrier access facilities at a cost which would be passed on to our electric customers.

- Origin-to-Destination Rate Case Relief. A third option is really no option at all, and that is to obtain origin-to-destination common carrier rates from our existing rail provider to apply after our transportation contract expires. Obtaining these rates would allow us to initiate a maximum rate complaint with the Surface Transportation Board. Such a complaint could result in a maximum rate prescription order from the Surface Transportation Board for our Powder River Basin-to-Rodemacher transportation. This option cannot, however, produce competitive pricing under current law.

By law, the Surface Transportation Board cannot set maximum rates at less than

180 percent of a railroad's variable costs (including capital costs). However, I am advised that in competitive coal transportation markets, the transportation rates should be substantially less than 180 percent of the railroads' costs (while still ensuring the railroads earn a healthy profit margin). As a result, the Surface Transportation Board relief simply cannot give us competitive market rate for the competitive segment of our rail transportation (Powder River Basin-to-Alexandria).

I would also add that the Surface Transportation Board maximum rate process is most difficult for smaller entities like LUS. We understand that just to initiate a rate case requires the shipper to pay a filing fee of \$61,400, that the shipper carries most burdens of proof, that the time required to complete such an effort would be a minimum of 2 years and that the expected litigation costs would be in the millions of dollars.

Finally, Mr. Chairman, it has been pointed out to me that the February, 1999 GAO Report entitled "Current Issues Associated With the Rate Relief Process" found that the Surface Transportation Board only has the resources to process two rate cases at a time. Twelve rate cases are currently pending at the Surface Transportation Board. Smaller entities like LUS need a simpler, easier, and less expensive process that produces fair results.

4. How Congress Can Help

Mr. Chairman, let me describe how we believe Congress can help us. What we want the most is reasonable access to rail competition. If the Surface Transportation Board or the Congress would change the current decision regarding "bottlenecks" and require our existing rail carrier to provide reasonable rate and service terms from Alexandria-to-Rodemacher, we would at least have competition from the Powder River Basin to Alexandria. This competition could result in reduced rates for the entire movement of our coal from the Powder River Basin to Rodemacher. We would also like

to see Congress reduce the filing fee for rate cases to no more than the filing fee that is applicable in Federal district courts, reallocate some of the burdens of proof in rate cases to the railroads and provide the Surface Transportation Board with sufficient resources to process their rate cases in an efficient manner.

Also, over the past two decades Congress has passed legislation de-regulating a number of industries. In doing so, Congress has usually required non-discriminatory, and open access to existing infrastructure. It would appear to be consistent for similar legislation to apply to the rail industry.

Mr. Chairman, in conclusion, we thank you for providing us the opportunity to appear before you today and we appreciate your interest in these important issues.